IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9466 of 1999

with

SPECIAL CIVIL APPLICATION No 714 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GUJARAT STATE LAND DEVELOPMENTCORPORATION LTD

Versus

BHAILALBHAI TRIKAMBHAI MAHIDA

Appearance:

1. Special Civil Application No. 9466 of 1999
   MR HS MUNSHAW for Petitioner No. 1-2
   Mr. H.D. Dave, AGP for Dy. Director,State of Gujarat
   MR RAMNANDAN SINGH for Respondent No. 1
2. Special Civil Application No. 714 of 2000
   Mr. H.D. Dave AGP for Petitioner No. 1
   Mr. Ramnandan Singh for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 02/04/2002

ORAL JUDGEMENT

Heard learned advocate Mr. Munshaw and Mr. H.D. Dave, learned assistant government pleader for the petitioners and Mr. Singh for the respondent in both the petitions. Learned advocate Mr. Munshaw has requested to join the Deputy Director, Agricultural Department, State of Gujarat as party respondent to special civil application no. 9466 of 1999. Leave to join the said authority as party respondent to the said petition is granted. Mr. H.D. Dave, learned AGP appearing for the petitioner in Special Civil Application NO. 714 of 2000 has waived on behalf of the said authority - newly added respondent in SCA No. 9466 of 1999 and has waived the service of rule on behalf of the said authority. By way of these two petitions, the petitioners have challenged the award made by the labour court concerned in Reference No. 251 of 1990 dated 9th July, 1999 wherein the labour court has granted reinstatement with effect from 1st November, 1987 with sixty per cent of the back wages for the intervening period with all consequential benefits. Special Civil Application No. 9466 of 1999 was admitted by this Court by issuing rule thereon by order dated 7th February, 2001 and interim relief has been granted subject to compliance of section 17B of the Industrial Disputes Act, 1947. Special Civil Application No. 9914 of 2000 was admitted by this Court by issuing rule thereon by order dated 7th February, 2001 and interim relief has been granted subject to compliance of section 17B of the Industrial Disputes Act, 1947. IN respect of both the petitions, the respondent has filed affidavit as required under section 17B of the Industrial Disputes Act, 1947. Today, during the course of hearing of these petitions, learned advocate Mr. Singh appearing for the respondent workman has made a statement before this court that the respondent has not been paid the benefits under section 17B of the I.D. Act,1947.

Learned advocate Mr. Munshaw has submitted that the respondent was initially appointed by the Deputy Director (Engineering) Wing No. 2, Gujarat State Land Development Corporation Ltd., Baroda and thereafter, the said project was transferred to the present petitioner alongwith the staff as per the resolution dated 13th January, 1983. According to him, initially, the respondent was appointed by the Director of Agriculture, Baroda Engineering as Daily wage employee on 1st January, 1983 and since the project was transferred to the

petitioner, the respondent was also transferred to the petitioner office as daily wager with effect from 1st February, 1983 alongwith other staff and he worked as daily wager upto 31st March, 1983. According to him, the respondent was working as daily rated employee subject to availability of work and accordingly, he was provided the work with effect from 1st November, 1983 to October, 1984 and thereafter, the respondent was engaged as apprentice clerk with the corporation from 7th October, 1984 to 6th October, 1985 but thereafter, he failed in the examination held by the competent authority in the month of October, 1985 and after completion of the apprenticeship period, the respondent was appointed with effect from 12th March, 1986 to 30th June, 1986 and thereafter, the State Government in its Agricultural Department passed another resolution on 18th November, 1986 through which resolution, said project was withdrawn with effect from 18th November, 1986 alongwith all the staff. According to the petitioner, the respondent has never worked with the petitioner after 30th June, 1986 and thereafter, the respondent has worked under the Director of Agriculture from 1st October, 1987 to 31st October,1987 and, therefore, the petitioner corporation is not concerned. The submission made by Mr. Munshaw is to the effect that actually, the responsibility is that of the Director of Agriculture means the State Government and there was no responsibility of the corporation because the respondent was transferred in the said department alongwith the project on deputation and thereafter he was taken back by the State Government while withdrawing the scheme and therefore whatever services rendered by the respondent in view of the transfer of the scheme alongwith the staff of the petitioner corporation and therefore his services has been considered to be with the State Government and not with the petitioner corporation and in view of these facts, the labour court ought not to have directed the petitioner corporation to reinstate the respondent with 60 per cent of the back wages for the intervening period. He has also contended on merits that the respondent has not completed 240 days' continuous service during the last 12 months preceding the date of termination and, therefore, the labour court has erred in holding that he is entitled for the protection and benefits under sec. 25-F of the Industrial Disputes Act, 1947.

Mr. H.D. Dave, learned AGP appearing for the petitioner in Special Civil Application No. 714 of 2000 has submitted that actually, for all times, the respondent has worked with the corporation. According to

him, excepting his initial and the last appointment, the petitioner in special civil application no. 714 of 2000 has not appointed the respondent workman. He has submitted that initially the respondent was engaged by the State Government on 1st January, 1983 and thereafter on 13th January, 1983, he was transferred to the Corporation and thus, he has worked for only 13 days initially with the Government and by way of last appointment, he worked only for 31 days with the State Government and excepting this initial and last appointment, for all the period in between, the respondent has worked with the corporation and therefore if at all it is held that the termination was bad and in breach of the provisions of section 25F of the I.D. Act,1947, then also, the Corporation is responsible and liable to implement the award in question and the Labour Court has erred in holding that the petitioner State Government is also responsible for implementation of the award in question. He has also submitted that he respondent was not working as junior clerk on daily wage basis but he was working as daily rated helper and while working as such, his services were transferred in the corporation and therefore, directions of the labour court to the petitioner State to reinstate the respondent and to pay back wages at the rate of 60 per cent for the intervening period is erroneous and required to be quashed and set aside.

Learned advocate Mr. Singh appearing for the respondent has submitted that initially the respondent was appointed on 1st January, 1983 by the director of Agriculture Baroda and thereafter he was transferred on deputation with the Corporation alongwith the scheme and staff of the project and pursuant to such deputation, he worked with the corporation from 1st February, 1983 to 31st March, 1983 and then from 1st November, 1983 to 6th October, 1984 and 7th October, 1984 to 6th October, 1985 as apprentice clerk and then worked from 12th March, 1986 to 30th June, 1986 and during the intervening period excepting the initial appointment of the respondent and the last appointment of the respondent, the respondent has worked with the corporation. He has submitted that the respondent has worked for 12 months continuously from 1st November, 1983 to 6th October, 1984 and therefore, while terminating his services, provisions of sec. 25-F of the I.D. Act ought to have been followed either by the Corporation or by the State Government and admittedly, while terminating his services, the provisions of section 25-F of the I.D. Act have not been followed either by the Corporation or by the State Government and, therefore, the labour court was right in

setting aside such termination as violative of sec.25F of the I.D. Act, 1947 and the labour court was also right in granting reinstatement with 60 per cent of the back wages for the intervening period and has submitted that the labour court has not committed any error in reinstating the respondent. He has submitted that the respondent has remained unemployed during the intervening period and has not been gainfully employed elsewhere and therefore the award of back wages is quite just and proper but he is leaving the aspect of back wages at the discretion of this Court and the Court may pass appropriate orders as regards back wages without disturbing the award of reinstatement with continuity of service in exercise of the powers under Article 226/227 of the Constitution of India.

I have considered the submissions made by the learned advocates for the parties. I have also perused the award in question made by the labour court concerned. It is an undisputed fact that the respondent workman has already completed 240 days continuous service with the petitioner corporation from 1st November, 1983 to 6th October, 1984. It is also not in dispute that the petitioners have not followed the provisions of section 25-F of the Industrial Disputes Act, 1947 while terminating the services of the respondent workman. The only question is as to who is responsible for implementation of the award in question made by the labour court concerned. For implementation of the award in question, the petitioners are disputing their liability. Keeping in view this aspect, if the resolution dated 13th January, 1983 is taken into account, then as per Item - 5 page 15, while transferring entire Scheme to the Corporation, the State Government has specifically agreed that the entire establishment of the Scheme i.e. entire staff is transferred to the Corporation for a period of two years on deputation. That would mean that the employees who are transferred from the State Government to the Corporation would be on deputation in the Corporation and, therefore, they are considered to be the employees of the State Government. Similarly, while withdrawing the scheme, the State Government has issued the resolution dated 18th November, 1986 wherein at page 21, Item - 1, alongwith the scheme, entire establishment and zonal offices and the workshop, garage etc. were also transferred to the State Government by the Corporation. Therefore, whatever staff or the establishment has been transferred to the Corporation by the State Government has again been given back and retransferred to the State Government. Therefore, considering this transfer and retransfer of

the scheme and also considering the fact that the initial appointment of the respondent was made by the State authority and the last appointment has also been made by the State authority after the respondent was transferred from the Corporation to the State Government pursuant to the resolution of the state Government dated 18th November, 1986, according to my opinion, it is as clear as day light that the petitioner in special civil application No. 714 of 2000 i.e. the State of Gujarat through its Deputy Director, Agricultural Department is the employer of the respondent and is responsible for the implementation and execution of the award in question made by the labour court concerned and there is no liability upon the Gujarat Land Development Corporation to implement and execute the award in question made by the labour court concerned.

Now, as regards the merits of the matter, according to my opinion, the labour court was right in observing that the respondent has completed 240 days' continuous service from 1.11.1983 to 6.10.1984 while he was working with the corporation on deputation and, therefore, if an employee or the workman has worked and has completed 240 days' continuous service during the entire period of service and if he has not completed 240 days' continuous service within 12 months preceding the date of termination, then, in that situation also, he is entitled for the protection of section 25-F of the Industrial Disputes Act, 1947.

Section 25-F of the Industrial Disputes Act, 1947 has prescribed the conditions precedent to retrenchment of workman that no workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice.

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay (for every completed year of continuous service) or any part thereof in excess of six months; and

(c) notice in prescribed manner is served on the appropriate Government (or such authority as may

be specified by appropriate Government by notification in the Official Gazette.)'

It is not in dispute between the parties that these requirements were not complied with by the appellant corporation while terminating the respondent workman's service. The Labour Court rightly held accordingly.

The term 'continuous service' has been defined as per section 25-B of the Act. As per sub section (2) of section 25-B of the Act, where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under the employer.

(a) for a period of one year if the workman, during a period of twelve calender months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than
(i) one hundred and ninety days in the case of a workman employed below ground in mine and
(ii) two hundred and forty days, in any other case;
(b) for a period of six months,if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than
(i) ninety five days in the case of a workman employed below ground in a mine and
(ii) one hundred and twenty days in any other case.

Therefore, considering the definition of continuous service as per section 25-B of the I.D. Act and also considering the facts of the present case, the respondent herein has been in continuous service as defined under section 25-B of the Industrial Disputes Act, 1947 and, therefore, was entitled to the benefits of section 25-F of the I.D. Act, 1947.

In the facts of the present case, the respondent workman has remained in continuous service from 1.1.1983 to 31st October, 1987 as defined under section 25-B of the I.D. Act and, therefore, he was entitled for the benefits of section 25-F of the Industrial Disputes Act, 1947. This aspect has been examined by this Court in case of Modi Ceramics Industries versus Jivuben Rupabhai and others reported in 2000 (2) GLR 1558. Relevant

observations made by this Court in para 10, 11, 12, 14 and 13 while interpreting section 25-B sub clause (1) are reproduced as under :

"10. In view of the above provisions, it is clear that sub section (1) of section 25B of the Act provides that the workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service. Continuous service would be interrupted only by two modes and that is by workman leaving the employment or employer terminating his service by dismissal or discharge. Mere absence of the workman without obtaining prior leave for a days would not put an end to the continuous service of a workman. Sub section (2) opens with the words "where a workman is in continuous service within the meaning of sub clause (1)" and these words unmistakably indicate that the legislature has desire and intention to cover the cause even of those workmen who were not in continuous service for the purpose of retrenchment. Mere fact that the workman had not worked for 240 days in some year/s during his long employment would not debar him from claiming entire amount of retrenchment compensation as provided under section 25F of the ID Act. Mere fact that during some years in his long period, the workmen had not worked for 240 days is not an answer to deprive him of the retrenchment compensation by ignoring the entire period. Once it is proved and/or found that the workman is in continuous service, then, it is wholly immaterial whether he has worked for particular number of days in a particular year. The contingency which demands the worker to work for a period of 240 days as provided by sub sec. (2) of sec. 25B of the Act would come into play provided the workman is not in continuous service as required under section 25B of the Act.

Both, on principles and on precedent, it must be held that section 25B(2) provides a situation where the workman is not in employment for a period of 12 calender months but has rendered service for a period of 240 days within the period of 12 calender months and commencing and counting the back ward from the date of retrenchment, if he has, he would be deemed to be in service for the purpose of sec. 25B and Chapter V-A and once it is found that the workman

is in continuous service under section25B(1) of the Act and the workman is satisfying the conditions and contingency mentioned in the said sub section (1), then, it is wholly immaterial whether he has worked for a particular number of days in a particular year. Contingency which demands the worker to work for a period of 240 days as provided by sub section (2) of section 25B would come into play provided the workman is not in continuous service as required under sub section 25B (1) of the ID Act.

11. After considering the above provisions and the interpretation of section 25B (1) as also (2) of the ID Act, I have also considered the decision of the apex Court reported in AIR 1986 SC page 458 in the case of Workmen of American Express International Banking Corporation versus Management of American Express International Banking Corporation. In the said decision, the apex Court has interpreted the provisions of sub section (2) of section 25B of the ID Act and has also interpreted the actual working days of calculation including Sundays and other paid holidays can be taken into account. While interpreting sub section (1) read with sub section (2) of section 25B of the ID Act, I have also taken into consideration the observations made by the apex court in paragraph 4 of the said decision which are as under:

"4. The principles of statutory construction are well settled. Words occurring in statutes of liberal import such as social welfare legislation and Human Rights' legislation are not to be put in procrustean beds or shrunk to Liliputian dimensions. In construing these legislation, the imposture of literal construction must be avoided and the prodigality of its misapplication must be recognized and reduced. Judges ought to be more concerned with the 'colour', the content and the 'context' of such statutes. (We have borrowed the words from Lord Wilberforce's opinion in Prenn v. Simmounds, 1971 (3) All ER 2371. In the same opinion, Lord

> Wilberforce pointed out that law is not to be left behind in some island of literal interpretation but is to enquire beyond the language, unisolated from the matrix of facts in which they are set; the law is not to be interpreted purely on internal linguistic consideration. In one of the cases cited before us, that is, Surendra Kumar v. Central Government Industrial Tribunal cum Labour Court, we had occasion to say, "Semantic luxuries are misplaced in the interpretation of 'bread and butter' statutes. Welfare statutes must, of necessity, receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the Court is not to make inroads by making etymological excursions."

12. In a number of existing industrial establishment, both public and private, it has become a common tradition for employers to exploit the workmen on trivial grounds and thereby to adopt all sorts of unfair labour practices to terminate the services of such workman in the name of retrenchment and disciplinary action. Such victimized workmen are also mercilessly denied of their benefits for which they are otherwise entitled to inspite of existence of several constitutional and statutory safe guards for the protection of industrial workmen, there have been many of such cases where they are exploited. But the courts have been putting very much interest to do the socio economic justice with such victims and to protect their rights and interests. It is also required to be appreciated that the courts are creating new approaches for giving meaningful interpretation to the statutory provisions where the workman is claiming for the protection and benefits for which they are legally entitled to. It is also the anxiety of the court for strong and determined smooth exercise of legal wisdom to protect the interest of the workman to the possible extent within the frame work of statutory provisions. It is also required to have new approach to provide social justice to the victimized workman and to protect their

interest against the evil practices of the employer. Therefore, it is necessary to have humanitarian approach while applying liberal construction to bring out exact meaning of the relevant statutory provisions which remove the injustice done to the industrial workmen by termination and the employer's denial to pay benefits to such workman for which they are legally entitled to under section 25F of the ID Act on the ground that the workmen did not have continuous service of 240 days as contemplated under section 25B of the ID Act.

13. Therefore, according to my view, if the workman is satisfying sub clause (1) of section 25B of the ID Act, then, it is not necessary for the workman to satisfy the deeming provision which has been made under sub clause (2) of section 25B of the ID Act. Therefore, considering these provisions of section 25B of the ID Act, upon conjoint reading of section 25B with section 25F of the ID Act, it becomes clear that no workman employed in any industry who has been in continuous service for not less than one year under an employer can be retrenched by that employer unless the employer has to satisfy condition precedent mentioned in sub clause (a) to (c) of section 25F of the ID Act.

14. Therefore, considering the provisions of section 25F of the ID Act, which are the conditions precedent to retrenchment of workman, it is clear that it is not stated in those provisions that 240 days' continuous service is must for getting benefit of section 25F of the ID Act. On the contrary, it has been provided that no workman employed in any industry who has been in continuous service for not less than one year under under an employer shall be retrenched by that employer until the conditions precedent for retrenchment as provided under sub clause (a) to (c) of section 25B of the ID Act are satisfied. This would mean that for getting benefit of protection of section 25F of the ID Act, the workman is required to have completed not less than one year continuous service. Therefore, joint reading of section 25B (1) and (2) with section 25F of the ID Act makes it clear that in each and every case of retrenchment, it is not

necessary for the workman to prove before the labour court that he has completed 240 days of continuous service within 12 calendar months preceding the date with reference to which the calculation is to be made. If the workman is able to satisfy that he remained in continuous service with the employer for more than one year and his service is not interrupted by the employer during this period and his service has been interrupted only because of the cessation of work which is not due to the fault on the part of the workman, and other causes as mentioned under sub section (1) of section 25B, then, he is required to be considered to have remained in continuous service and such consideration of his being in 'continuous service' would entitle such workman to have the protection as provided under section 25F of the ID Act under which the conditions precedent to retrenchment of a workman have been provided. Thus, considering this fact, if the workman has completed and remained in service for more than one year and he will not be able to get work for more than 240 days in one year which is not interrupted on account cessation of work which is not due to any fault on his part, then, he is certainly entitled to the benefit of sec. 25F of the Act and, therefore, according to my view, though the respondents workmen have not completed 240 days' work in some years since it is not the case of the company that such interruption in service was due to any fault on the part of the workmen. Therefore, according to my view, the workmen are entitled to the protection of section 25F of the ID Act and this aspect has been considered by the labour court in its award in paragraph 13, 14 of the award and, therefore, the contention raised by Mr. Thakkar in this regard cannot be accepted."

However, while terminating the services of the respondent workman, the mandatory provisions of section 25-F of the I.D. Act have not been followed by the employer and, therefore, the labour court has rightly observed that the provisions of section 25-F of the I.D. Act have not been followed while terminating the services of the respondent workman and it is not even the case of the petitioners herein that they have followed such provisions while terminating the services of the

respondent workman and the labour court was, therefore, justified in making the award of reinstatement with continuity of service and there is no error in granting such reliefs in favour of the respondent workman. There is no jurisdictional error or procedural irregularity committed by the labour court which would require interference of this court in exercise of the powers under Article 226/227 of the Constitution of India. Therefore, so far as the relief of reinstatement with continuity of service is concerned, the labour court was perfectly justified in granting such relief and that part of the award does not require any interference of this Court.

So far as the back wages for the intervening period awarded by the labour court are concerned, it is necessary to be noted that the date of alleged termination is 1st November, 1987 because the respondent has admittedly worked upto 31st October, 1987 with the State of Gujarat. For the said termination of 1st November, 1987, dispute was raised after about three years and was referred to for adjudication on 23rd March, 1990. The second aspect is that initially, the respondent was appointed as daily rated helper for some time and he was given work of junior clerk. However, the labour court has, without taking into consideration the delay in raising dispute, granted back wages at the rate of 60 per cent from 1st November, 1987 whereas the dispute was belatedly raised by the respondent and was referred to for adjudication on 23rd March, 1990. Therefore, in view of the delay in raising dispute, according to my opinion, the labour court has committed error in granting relief from the date of termination i.e. 1st November, 1987. According to my opinion, if otherwise the respondent is entitled for back wages, then, back wages could be granted from 23rd March, 1990 which is the date on which dispute raised by the workman was referred to by the competent authority for adjudication. The labour court has granted back wages at the rate of 60 per cent for the intervening period. The matter has remained pending before the labour court for a period of about six years. Petitioners are a Public Body and and the State Authority and therefore, considering the aspect of delay as well as the fact that the petitioners are public body and State Authority, according to my opinion, award of back wages at the rate of 60 per cent for the intervening period is on higher side and it would be just and proper to reduce it to 30 per cent only and that too from the date 23rd March, 1990 on which dispute was referred for adjudication. If the award in question is modified to that extent without

disturbing the reinstatement of the respondent with continuity of serivce, it would met ends of justice.

Accordingly, it is clarified that the petitioner in Special Civil Application No. 9466 of 1999 i.e. Corporation is not responsible for the implementation and execution of the award but the petitioner State of Gujarat in Special Civil Application No. 714 of 2000 is responsible for implementation and execution of the award in question made by the labour court concerned and the award made by the labour court in Reference No. 251 of 1990 dated 9th July, 1999 is hereby modified in so far as it relates to back wages, from 60 per cent to 30 per cent and it is further clarified that such back wages are payable to the respondent workman from 23rd March, 1990 instead of 1st November, 1987 as has been awarded by the labour court. The directions issued by the labour court under the impugned award to reinstate the respondent workman on the post of junior clerk are hereby quashed and set aside and it is directed to the petitioner State of Gujarat to reinstate the respondent workman as daily wager helper, the post on which he was initially appointed by the State of Gujarat. Thus, the respondent workman is entitled for being reinstated as daily wager helper with continuity of service and with back wages at the rate of 30 per cent from the date of reference 23rd March, 1990. It is clarified that this court has not disturbed the award of reinstatement with continuity of service.

Learned advocate Mr. Singh has submitted that the award in question was made by the labour court concerned on 9th July, 1999 and till this date, the respondent has neither been reinstated in service nor has been paid the benefits under section 17B of the I.D. Act though the interim relief granted by this Court was subject to sec. 17B of the I.D. Act and, therefore, he has prayed for issuing some suitable directions to the petitioner in special civil application No. 714 of 2000 to implement the award of the labour court as modified by this Court within some reasonable period.

Considering the request made by Mr. Singh, it is directed to the petitioner in Special Civil Application No. 714 of 2000 to reinstate the respondent workman as daily wager helper within one month from the date of receipt of copy of this order and to pay back wages at the rate of 30 per cent from 23rd March, 1990 till the date of the award within two months from the date of

receipt of copy of this order. It is further directed to the said petitioner to pay full wages to the respondent workman from 9th July, 1999 till the date of actual reinstatement of the respondent workman.

Accordingly, special civil application no. 9466 of 1999 is allowed. The award made by the labour court in Reference No. 251 of 1990 dated 7th September, 1999 is hereby quashed and set aside in so far as the petitioner corporation in special civil application no. 9466 of 1999 is concerned. Rule is made absolute accordingly with no order as to costs.

Special Civil Application No. 714 of 2000 is partly allowed. Rule is made absolute in terms indicated hereinabove with no order as to costs.

Dt.2.4.2002. (H.K. Rathod,J.)

Vyas